

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS**

**Call to Order:** By **CHAIRMAN TOM KEATING**, on February 18, 1999 at 3:11 P.M., in Room 413/415 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Tom Keating, Chairman (R)  
Sen. Fred Thomas, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Alvin Ellis (R)  
Sen. Bob Keenan (R)  
Sen. Walter McNutt (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Gilda Clancy, Committee Secretary  
Eddy McClure, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 466, SB 479, SB 508,  
2/17/1999  
Executive Action: SB 432, SB 466, SB 479, SB 508

**HEARING ON SB 466**

**Sponsor:** **SEN. MIKE HALLIGAN, SD 34, Missoula**

**Proponents:** Janet Bauer, Occupational Therapist, Great Falls  
George Wood, Executive Director, Montana Self-Insurer's Association  
Nancy Butler, State Fund  
Bob Worthington, Executive Director, Montana Municipal Insurance Authority  
Ray Barnicoat, Montana Association of Counties

**Opponents:** None.

**Opening Statement by Sponsor:**

SEN. MIKE HALLIGAN, SD 34, Missoula, informed the Committee two years ago, former SEN. STEVE BENEDICT carried a bill which changed Workers' Compensation laws and one item in the re-drafting of that legislation left out 'occupational therapist'. They are now included on page 2 of the bill as individuals who are able to do a functional capacity evaluation. This bill only adds them to the language.

**Proponents' Testimony:**

Janet Bauer, Occupational Therapist, Great Falls, stood as a proponent to SB 466 EXHIBIT(las40a01). Ms. Bauer also handed in EXHIBIT(las40a02).

George Wood, Executive Secretary, Montana Self-Insurer's Association, supported this legislation and recommended a "do pass".

Nancy Butler, State Fund, informed the Committee they are currently using occupational therapists and would appreciate the clarification to the law.

Bob Worthington, Montana Municipal Insurance Authority, supported SB 466.

Ray Barnicoat, Risk Manager, Montana Association of Counties Workers' Compensation Trust, stood in support of this bill.

**Opponents' Testimony:**

None.

**Questions from Committee Members and Responses:**

None.

Closing by Sponsor:

SEN. HALLIGAN closed by saying "I close".

*{Tape : 1; Side : A; Approx. Time Counter : 8 - 44}*

HEARING ON SB 479

Sponsor: SEN. EVE FRANKLIN, SD 21, Great Falls

Proponents: Tom Crane, President, United Food & Commercial  
Worker's Union, Local #8  
Don Dahl, Machinist, Representing Self  
Todd Thun, Montana Nurses Association  
Don Judge, Montana State AFL-CIO  
Gene Fenderson, Montana Joint Heavy & Highway  
Committee  
Al Smith, Montana Trial Lawyer's Association

Opponents: George Wood, Executive Secretary, Montana Self-  
Insured's Association  
Jim Nys, Society For Human Resource Management  
Bob Worthington, Montana Municipal Insurance  
Authority  
Ray Barnicoat, Montana Association of Counties  
Chris Gallus, Montana Chamber of Commerce  
Leo Ward, Montana School Groups Insurance  
Authority  
Lois Menzies, Director, Department of  
Administration

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls, stated the purpose of SB 479 is to provide a two-year employment protection for individuals who have been injured on the job in the course of their employment. At present, in law there is no requirement that if one were injured on the job and they did recover within that two-year period, they would actually be in a position to receive their job back again. If a person is in a physical line of work which requires some degree of threat and is injured, he or she could permanently be replaced despite the fact they might recover from that injury. Consider the uncertainty this puts an employee in. If they are in good faith and involved in a recovery program, they know they may not be able to receive their position back again once they are healed. Ultimately, for everyone the goal is an early return to work. If they cannot do

that, she is asking that they can, upon recovery, return to their job within a two year period when recovered.

**Proponents' Testimony:**

**Tom Crane, President, United Food & Commercial Worker's Union, Local #8, Great Falls and North Central Montana,** said he is appearing to support this bill. **EXHIBIT(1as40a03)**

**Don Dahl, Machinist, Representing Self,** expressed this bill will help workers like himself who were hurt on the job. Also, it will help with the anguish families go through because of this situation. He was injured on the job and tore his rotator cuff on the right shoulder and went through months of physical therapy. It was finally decided he had to have surgery to correct it. He had surgery last December 18. Up to that date he had been employed. The surgery was successful, it repaired the shoulder and he was suppose to be off work for three months. In the meantime he had problems with the other shoulder and had it operated on also; that shoulder injury was not a Workers' Compensation injury. He received a letter from his employer that he was terminated. He went into see his employer who told **Mr. Dahl** his Workers' Compensation rates were going up because of **Mr. Dahl's** injury on the job. He did return to work but there were arguments over seniority, vacation which was due him, etc. He had worked for this employer for ten years and had done a good job for him, but as soon as he saw his Workers' Compensation rates going up, **Mr. Dahl** became unexpendable.

**Todd Thun, Montana Nurses Association,** remarked nurses constitute one of the largest single working professions in the State of Montana as a group. In their careers there is an excellent chance of back injury because of moving patients, so the number of nurses who end up with back injuries is quite surprising. They are doing this work in the line of employment and it is inconceivable to see why they should be penalized for injuring their back while working for the employer and then not being able to go back to work at the same rate of pay or at the same level of seniority. He urged support for this bill.

**Don Judge, Montana State AFL-CIO,** stood in support of SB 479. Currently an employee cannot be terminated for filing a claim. That does not change with this bill. You cannot fire somebody for simply filing a claim. Under current law, an employee has a two year preference for a job which becomes available at that employer's place of business. If an employer hires somebody into replace an injured worker, then there is no vacancy within that two year period of time, the employee has no rights to re-employment there, unless something becomes available to them.

That is called a 'preference' which is contained in this bill on lines 12 - 14. They are trying to change 'preference' to a two year employment protection which is on lines 13 - 14. They do not believe this is unreasonable.

On page 4, line 17 it states, "when a medical service provider who is qualified to be a treating physician, determines that the worker is likely to be capable of returning to work, the employer may not permanently replace the worker within two years from the date that worker became disabled". They are not asking that an employer not replace a worker who may never go back to work, only not to permanently replace a worker who a certified medical provider is saying will be able to return to work within that two year period of time. They realize employers will be concerned about whether or not they can temporarily replace a worker. This bill addresses that on page 2, line 10. This is a just piece of legislation. They believe an employer should have an obligation to take a worker back within two years if they are injured on the job.

**Gene Fenderson, Montana Joint Heavy & Highway Committee,** mentioned the Teamster's Local #190 Union from Billings wanted to be present but could not, so he is speaking on their behalf also. He believes this bill is very lenient and can be placed under state statute for the protection of returning the employees. For the state to set a guideline of two years is very lenient. The original language 'preference' was introduced by former **REP. JERRY DRISCOLL**. **Mr. Fenderson** helped lobby that. It has not been a great 'win' because we still have arguments from employers claiming the worker cannot do the job. This bill is necessary.

**Al Smith, Montana Trial Lawyers,** remarked many members who do represent Workers' Compensation claimants report to him that workers want the benefits while they are out of work. They want to get their medical taken care of, but most importantly, they want to get back to work. This bill gives back some fairness. If a worker is able to go back to work, that position is held open for them for two years so they get back on track if they are physically able to do the job, and the job will be their for them. They gave their best to their employer, they are asking their employer give their best back.

#### **Opponents' Testimony:**

**George Wood, Executive Secretary, Montana Self-Insurer's Association,** stated his group is composed of employers who insure their obligation under line 1 of the Workers' Compensation. He recognized **Mr. Judge** clarified the fact there is a prohibition against terminating an employee and also vesting jurisdiction of

handling disputes with the District Court and not with the Workers' Compensation Court. The bill amends 39-71-317 by replacing a return-to-work preference with an outright reinstatement. The present statute provides, "when an injured worker is capable of returning to work within two years from the date of injury, and has received a medical release to return to work, the worker must be given preference over other applicants for probable job positions which become vacant if the position is consistent with the worker's physical condition and vocational abilities.

The amendment provides, "when a medical provider who is qualified to be a treating physician determines the worker is likely to be capable of returning to work, the employer may not permanently replace the worker within two years from the date the worker became temporary totally, temporary partially, or permanent partially disabled. Temporary totally is permanently disabled, temporary partial is return to work in some capacity because it is a partial disability and permanent partial disability is most often only available about one year from the date of the injury, because that is when most doctors evaluate impairment. The amendments further state when an injured worker is capable of returning to work within the two years from the date the worker becomes temporary totally or permanent partially or temporary partially disabled, and has received a medical release, the employer shall immediately reinstate the employee without penalty to the employment position in which the employee was working when the employee became partially or permanent partially disabled as a result of the work-related injury or occupational disease or to another position with substantially the same wages, benefits, status, and responsibility. There are also provisions regarding the lay-off of a qualified employee. Those provisions indicate the employee makes the allegation and the employer is required to refute it, not that the employee is required to prove the allegations. To examine the re-employment provision, the time period is two years from the date the worker became disabled and in these disability classifications.

Temporary total would start on the date of the injury, temporary partial begins after there is work in a reduced capacity with reduced income, and permanent partial is at a later time and it is the provision that most likely happens within one year from the date of the accident. Line 18, page 1 has vague language. What does the word 'likely' mean? Does it mean possibly, probably, or certainly? If somebody who says they are likely to return to work, is it based on medical provisions or the desire to return to work? Line 25, page 1 states the employer shall immediately reinstate the employee without penalty to his position at the time of the injury or to another position. The job reinstatement does not have to be consistent with the

employee's physical condition. The reinstatement job does not have to be one the employee has the vocational abilities to perform, that provision is removed from the act by this bill. What is reinstatement without penalty?

Does that mean a employee may have to be discharged that has worked for two years? Also, what happens to the qualified worker who has been working for this employer for two years? Does he have to be terminated, or does someone else has to be terminated if he has obtained some rights by his work? Nothing in the bill requires the worker to report to work upon release. What if there are changes in the workplace and the job is no longer in existence? Where does an employer reinstate that job? This is not a good bill. **Mr. Wood** asked the Committee not to pass this bill.

**Jim Nys, Society For Human Resource Management**, explained they oppose SB 479, **EXHIBIT (las40a04)**.

**Bob Worthington, Montana Municipal Insurance Authority**, said he represents 116 cities and towns across the State of Montana. This bill causes employers substantial concern for the cities and towns. They may be required to lay people off short of 12 months, which they are very concerned about. Regarding the emergency services which the cities and towns are required to provide, they insure approximately 75 cities and towns which have very small law enforcement, six officers or less. That requires a very specialized type of training in these communities. Those officers fill a schedule which is very, very difficult to alter. Also, under state law a police officer is required to attend post-certification training within one year. Other communities meet that requirement and still leave that job open for two years. That seems to be an unworkable and unattainable position. Towns would not want an untrained, temporary police officer even if they could find one. The same circumstance pertains to fire and other emergency services. Those types of things are difficult. Also, cities and towns must appoint police officers within 12 months. They must receive a permanent employment, and with fire personnel it must be six months. Again, both present a great deal of problem with this type of legislation. Therefore, they strongly oppose SB 479.

**Ray Barnicoat, Risk Manager, Montana Association of Counties Workers' Compensation Trust**, remarked his association feels the same about this bill as the previous proponents.

**Chris Gallus, Montana Chamber of Commerce**, questioned if an injured worker is with them for less than a period of two years, does the employee hold that job? He asked the Committee to

consider what happens to that qualified worker who has been with them for two years in a position and the difficulty the employer has had in hiring to fill that position. Those individuals in a competitive job market are unable to fill that slot with the qualifications needed. He asked the Committee to seriously consider the deficiencies in this legislation.

**Leo Ward, Claims Counsel, Montana School Groups Insurance**

**Authority**, explained they are self-insurers for 80% of the schools in the State of Montana. They represent the largest self-insurers for Workers' Compensation by payroll. This bill would create problems for schools. They would have to keep jobs open for two years at a time, then try to replace people with temporary employees. We haven't heard a lot of evidence this preference statute is broken and needs to be fixed. In his experience as an attorney working in the Workers' Compensation field, he does not think physicians are very good at predicting the future of injured workers. To put physicians in a position where they have to determine whether or not someone is likely to return to work (whatever the term likely means) in two years, is to place them in an impossible position. This bill creates more vague legislation which will be misinterpreted. It also creates law we don't need when we already have protections which were mentioned in the Wrongful Discharge Act, the Americans With Disabilities Act, and the preference statute they are trying to amend. Therefore, the school groups oppose this bill.

**Lois Menzies, Director, Department of Administration**, also opposed this bill. **EXHIBIT(1as40a05)**

**Questions from Committee Members and Responses:**

**SEN. ELLIS** asked if there is anything in statute which defines work-related. How do we determine whether an employee has a work-related injury?

**Nancy Butler** responded the term work-related refers to whether or not an individual was working and the relationship of their injury to that work. Beyond that, if reasonable people cannot agree upon the meaning, it is referred to litigation for determination.

**SEN. ELLIS** asked if going to and from work is work-related.

**Ms. Butler** answered not in Workers' Compensation with some exceptions, however. A person is generally not covered going to and from his or her place of employment under the Workers' Compensation Act. However, there is an exception which is if a



person is required and his or her employer is paying travel expenses.

**Closing by Sponsor:**

**SEN. FRANKLIN** said in listening to the objections of the opponents, we need to ask what the core issue of this bill is. Part of this issue is that an individual who is a good-faith employee of a good-faith employer, if in the line of duty is injured, they deserve special recognition. In some ways, certain branches of employment like the service is given special recognition. There was some discussion about what is work-related, but there were no concrete examples. An example is, for instance, Tom Crane who represents retail sales workers, grocery checkers, folks who work in big grocery stores and pharmaceutical chains. The worker's day is physical, they check all day long, they do inventory, they do a lot of heavy lifting. Two specific stories of middle-aged women in their 50s who hurt their back picking up a box or a can was given. In one case, the woman was out of work for six months and then came back with a lifting restriction. Just prior to Christmas when it became more apparent that a different kind of worker was needed, she was fired due to her residual problems.

Another instance he spoke about was an individual who had 13 years in a grocery store chain, ripped her rotator cuff and was fired after six months and a day. Ultimately, that was overturned in arbitration but she didn't believe that was appropriate necessarily for workers to prove themselves when they, in fact, have been good and faithful employees. **{Tape : 1; Side : B; Approx. Time Counter : 44 - 98}** One other issue was the laws of preference. A number of individuals made some arguments as to why two years is inappropriate. Some have to do with law enforcement academies, some have to do with changes in the workforce for a number of reasons. If, in fact, that preference is not appropriate, what that says is the preference currently is not a tool for employees because employers are finding ways in a number of situations where it is not convenient, a good-faith contract is broken. This bill is a protection for the employee.

**HEARING ON SB 508**

**Sponsor:** SEN. VICKI COCCHIARELLA, SD 32, Missoula

**Proponents:** Jerry Driscoll, Montana Building & Construction  
Trades Council  
Don Judge, Montana State AFL-CIO

**Al Smith, Montana Trial Lawyers**

**Opponents:**       None.

**Informational Testimony:** Nancy Butler, State Fund

**Opening Statement by Sponsor:**

**SEN. VICKI COCCHIARELLA, SD 32, Missoula,** commented she wanted to bring this bill because of her concern about how severely injured workers are dealt with, and the cuts in their benefits over time. When someone is severely injured and receives very little benefit for his injury into the future and, therefore, may have a cause for an inclusive remedy law suit against the employer. Another concern is to be sure we are making some effort to take care of those severely injured workers in the State of Montana. The only change in the law is on page 1, line 22 where the injured worker goes from 350 weeks of permanent partial disability benefit to 400 weeks. She has worked this out from several calculations. She is a claims adjuster for a third party administrator who does claims for Plan 1 self-insureds.

It seems to her in the world of Workers' Compensation, Plan 1 employers have a difficult time getting people to return to work. They are very dedicated in making sure injured employees get every chance to be rehabilitated. There is still a risk to those employers and to all the other employers, especially small employers in the state. Once we have cut benefits to fund some level there is an opportunity for them to lose their insurance protection. She tried to find the best way to approach this and felt by increasing the number of weeks would be a small step, but one way to approach the problem. Information was presented to the Labor Committee from the Senate Business Committee, and the people who backed the bill were the AFL-CIO.

Under benefits limitations under permanent partial disability show how other states are allocating weeks. Every state is different in the benefits they provide. Montana is at 350 weeks. That change was made to the law in 1991. We went from 500 weeks to 350 weeks for permanent partial disability. That is the only benefit in this bill. In 1995, benefits were cut in half regarding a disability impairment rating. In the Business Committee, they heard about someone who had lost their arm below their elbow and received a 57% whole body impairment rating. That person went to the doctor, who took a book off the shelf called the JAMA Guide. The doctor writes down the impairment rating, sends it into the insurer, or the claims adjuster. In

most arenas and discussing people involved in this business, 15% to 20% is more likely to be the medical impairment rating that a doctor will give someone who is injured. Quite often it is a back. She gave an example of a person who is a highly qualified technician, not a doctor, who works in a hospital in emergency and operating rooms and had something explode in his hand that he uses every day. He makes about \$50 per hour which is about \$100,000 per year. That person is about 39 years old, what is important is that person is not yet 40. The other person is a 22-year-old college graduate who is still working at McDonalds, has worked part time all the way through school, makes about \$150 per week and has also lost a hand working at McDonalds. Under this scenario, they are both entitled to the medical impairment rating and the doctors each is seeing gave both a 20% impairment rating for the loss of their hands. Under current law, they both get 0% because they are under 40. If you are over 40, you would get 1%. Under the old law, the highest you could get for age is 3%. Both have a college degree and under current law if they have less than a high school diploma, they could get a percentage point.

Currently, the person who works at McDonalds who has a college degree who go off to be one of these medical experts, gets 0% wage loss because the rehabilitation specialist determines this man can get another job at \$5.50 per hour. The man who is working for \$50 per hour gets a 20% wage loss because he can't find a job within \$2 per hour of what he was making which was \$50. If he has more than a \$2 per hour wage loss, he gets 20%. These people can't lift up to more than 10 to 20 pounds. It would probably take two hands. When the calculations are completed and the 350 weeks are applied, under this legislation, the man who works at McDonalds would have a benefit with those percentages of \$13,800 for the loss of his hand. That is the maximum he could get under this bill. Under the old law, it was less. The man who worked for \$100,000 per year, with the increase to 400 weeks would get \$35,346.

That man who makes \$100,000 per year will have to be re-trained, has a great potential for re-training as the person who worked at McDonalds because they are both lucky enough to have college degrees. Under the scenario of 400 weeks, we aren't increasing a benefit in the State of Montana to the degree that it pays them some incredible amount of money for the loss of a hand. We are only hoping to help them for 50 more weeks, giving them a little bit more time to receive partial disability benefits. We do not have cases which are 100% because their permanent total disabilities was a loss of a body part. Under old law, the maximum someone could have received if we used 57% impairment rate, that person would have received 103% with all the percentages added in for age, wage loss, education, and physical

demand, but since that person can receive only 100%, at 400 weeks he would have received \$482,200. Currently, that same maximum under this law for that loss below the elbow, applying the maximum amount, adding the 57% the doctor gave, give 336 weeks of benefits for \$69,048. This is not causing rates to skyrocket, but taking a small step. The difference between the two is \$13,152. That is what she is asking for someone to be able to go along a little bit longer to become re-employed after they have lost have of their arm. This is an effort to restore some of the benefits and fairness. It doesn't go very far. This does entail a rate increase of about 4%. We are looking at a potential rate increase to employer's premiums, but it is worth it for the protection regarding exclusive remedy, and for the sake of the severely injured workers in Montana. Also, the man who was making \$100,000 can only receive a benefit of half the average weekly wage in Montana, which is \$205.50 per week.

### **Proponents' Testimony:**

**Jerry Driscoll, Montana State Building & Construction Trades Council**, said it appears from the bill the claimant will receive 50 increase in benefits and that is not the case because of the percentages contained in 39-71-703 MCA. They only receive a percentage of the 50 weeks, which on the average would be an additional 12 - 14 weeks for the average worker. He sat on a committee between the 1985 and 1987 session where they studied this, had a bill ready and the Department of Labor threw away this bill and drafted their own. Under their scenario, every person who had an injury which had an impairment of 1% to 50% was entitled to 500 weeks, but no rehabilitation. They had to pass the 'ABC' test. 'A' was to return to the former job and former employer, 'B' was the former job, different employer, and 'C' was transferable skills. For instance, they could always find a person a job as a parking attendant so they did not receive rehabilitation. In 1991, at 350 weeks benefits plus percentages, 104 weeks at temporary total disability and no 'ABC' test, they had to try to rehabilitate that claimant. In 1995 the department cut the percentages in half, and they say they've done a wonderful job. All they have done is cut benefits for years.

**Don Judge, Montana State AFL-CIO**, also supported SB 508.

**EXHIBIT (las40a06)** This document was produced by the National AFL-CIO based upon their surveys of other states. The document is accurate information. The percentages **SEN. COCCHIARELLA** dealt, in part, with the claimant's education. There were additional percentages which were cut in the laws in the early 1990s. When it came to the heavy labor activities which a worker could perform prior to the injury and after the injury, that

worker could perform heavy labor before the injury and then only could perform sedentary labor after the injury. The benefit was not cut in half. It went from 20% down to 5%. From heavy down to medium labor, it wasn't in half, it was from 15% down to 3%. Medium labor to light sedentary labor, it was 10% to 2%. This is not huge, but this will help restore some fairness and balance to the system of Workers' Compensation. If it costs 4% as a rate increase in Montana, since 1993 employers have experienced rate cuts of in excess of 50% in their premiums. This is not a huge cost to employers in the state, just recapturing 4% and leaving them with 46% reduction over that same period of time. There are 28 states which currently use more than 350 weeks to calculate permanent partial disability. There are 25 states which use more than 400 weeks to calculate permanent partial disability. There are six states which allow benefits to the duration of the disability. This is a modest, fair increase and he encouraged support of this bill.

**Al Smith, Montana Trial Lawyer's Association**, affirmed for injured workers, every little bit helps. This bill is not for a law suite challenge nor for exclusivity remedy. He said the benefit for loss of a hand is about \$13,000.

**Opponents' Testimony:**

None.

**Informational Testimony:**

**Nancy Butler, State Fund**, informed the Committee she was present to provide information. This change is by an administration approach a very simple change. It moves the maximum amount of permanent partial benefits from 350 weeks to 400 weeks. This is easy for the State Fund to administer and to make the change. From the insurance company perspective, this change was priced by the National Council on Compensation Insurance (NCCI) as a 4% overall rate increase. The NCCI is a national organization whose function is to collect data and statistical information from the private carriers and from the State Funds, then they provide reports on the information. They also provide information on Workers' Compensation rates for Montana which the State Fund and private carriers use for a basis for their rates. For the State Fund, if this bill were passed, this would be a 3.5% increase. The NCCI calculates this based on what the benefit change would cost. They also add overhead onto that particular cost. For State Fund customers, this is between \$2M to \$2.5M extra dollars which would have to be collected each year to handle this increase in benefits. The insurance companies pass that cost onto the employers who pay the premiums to them. The NCCI

completed a study from the State Fund because the information they had, Montana's State Fund rates were the highest in the nation in 1995. They've completed reforms since that time, but it appears their benefit structure didn't appear to be the highest in the nation.

Right now, the State Fund's rates are 195% of the regional states around Montana. In 1994, their rates were 265% of those states. In 1998 they came down to 195%. **EXHIBIT(las40a07)** The gap has been narrow but overall the rates are higher in Montana. The NCCI claimed some of the reason for the higher rates is because of the higher hazard employment in Montana such as logging, mining, and agriculture. Those industries are more predominant in our state than in other states. **EXHIBIT(las40a08)** What compounds the problem in Montana is our state's average weekly wage is \$411. **EXHIBIT(las40a09)** Other than South Dakota, we are rather low in our state's average weekly wage and this impacts the benefits paid. Also, our maximum permanent partial disability benefit is lower. **EXHIBIT(las40a10)** This is partly driven by the state's average weekly wage itself.

Regarding an individual worker, the average permanent partial claim payment per 100,000 workers is approximately 86% of the average of those states around. **EXHIBIT(las40a11)**, **EXHIBIT(las40a12)**, **EXHIBIT(las40a13)** The NCCI also took the state's average weekly wage and adjusted Montana's benefits which raised Montana to slightly above average, if assuming we had a higher weekly wage. We don't appear to be paying our workers the highest benefit, so why are our rates so high? The NCCI found from comparing Montana to surrounding states is we have essentially doubled the frequency of permanent partial injuries in Montana. We have twice as many workers accessing permanent partial benefits in Montana compared to the states around us. In wondering is there is something unusual about our act, part is the high-hazard employment and another is our population density. **EXHIBIT(las40a14)** Montana had the lowest population density per square mile of those states. Montana's metropolitan population is very low. When a worker is injured in Montana, their ability to go back to work and find a job which pays the same is limited because we just don't have the same employment opportunities as a state with a denser population.

**Jacqueline Lenmark, American Insurance Association**, stated her association does not give advise regarding the benefit system a state might choose, but her association does attempt to give policymakers information about the affects of the choices they might be considering. **Ms. Butler** already explained much of the information they would urge the Committee to consider. Also, Montana does have an unusually high rate of accessing permanent

partial disability and for some reason no one can explain the reason for that. In 1991, when former Representative Driscoll was serving on a joint select interim committee, even with all the efforts to reform, Montana continued to have the high rate of permanent partial disability.

**Questions from Committee Members and Responses:**

**SEN. FRED THOMAS** asked **Nancy Butler** if we increased the permanent partial rate an extra 4%, what would that buy in other areas.

**Ms. Butler** responded that now the permanent partial rate is 66 2/3% of the wages, but is capped out at 50% of the state's average weekly wage. She called NCCI and asked if they increased the permanent partial maximum to 66 2/3% of the state's average weekly wage, that would be a rate increase of 5.8%. To reach 4%, the cost of raising the number of weeks would be a maximum of 60%.

**CHAIRMAN KEATING** asked what the estimated cost in dollars annually would be for this raise for the State Fund.

**Ms. Butler** responded it would be approximately \$2.5M annually. The 3.5% would raise rates sufficiently. The amount raised would be approximately \$2.5M in revenue for the policyholders.

**CHAIRMAN KEATING** stated regardless of the fact we have dropped our rates quite a lot in the past few years, we would still be higher in the region than competing states around us.

**Ms. Butler** responded that is correct.

**CHAIRMAN KEATING** asked **Jacqueline Lenmark** from the folks she represents, if they have any idea how much their rates would have to be increased in order to cover this increase in benefits.

**Ms. Lenmark** responded she was unable to because it would be inquiring of 350 companies as to what their dollar increase would be. The 4% which is quoted by NCCI would have the information her companies would rely on. *{Tape : 2; Side : A; Approx. Time Counter : 0}*

**CHAIRMAN KEATING** inquired about percentage-wise, how many companies does **Ms. Lenmark** represent.

**Ms. Lenmark** thought it is approximately 36%.

**CHAIRMAN KEATING** asked **George Wood** if the charges to his membership increase.

**Mr. Wood** responded the increase in costs to the self-insurers would go up. The self-insurers paid just about \$22M in benefits last year. Another 4% of \$22M is approximately what their costs would increase.

**CHAIRMAN KEATING** stated then everybody's rates would go up, depending upon the number of injuries and the fact they seem to have a higher number of various kinds of injuries or greater frequencies.

**Closing by Sponsor:**

**SEN. COCCHIARELLA** closed by stating she did not believe the Committee got the full picture of what is going on. **Nancy Butler** handed out charts regarding permanent partial disability, maximum weekly benefits in the region. We are 199th in the region. That is how much money the claimant receives in their pocket. That is how much money that person is expected to live on. They adjusted that amount to our population. The charts also show the ability to get a job is relative to the population. The reason this increase in benefit is important is that it may give someone a better chance to become re-employed. The only option they have after that doesn't happen is welfare. These people have been working, and injured while employed, and most are severely injured. Do they deserve to end up on welfare or should we increase their benefit a little bit to give a little more time for rehabilitation to work? It is difficult enough to be on Workers' Compensation and be in Montana to find another job. But when a person is only receiving that average permanent partial, maximum weekly benefit which is \$205.50 it is not easy. The only difference in this bill is how many weeks that person receives it. This increase is only to help people become re-employable, to get a larger benefit to maybe help with their rehabilitation. She was disappointed some of the proponents mentioned this bill couldn't stop an exclusive remedy case. The purpose for Workers' Compensation in 1912 and 1913 was to provide an insurance policy to employers so they wouldn't be sued and lose their business when someone was injured or died at the work site. She contends with this bill we would be going in the right direction. She urged the Committee to support this bill.

***{Tape : 2; Side : A; Approx. Time Counter : 98 - 120}***

**EXECUTIVE ACTION ON SB 432**

**Motion/Vote:** **SEN. THOMAS** moved that **SB 432 BE TABLED. Motion carried unanimously.**



**EXECUTIVE ACTION ON SB 466**

**Motion/Vote:** SEN. MCNUTT moved that SB 466 DO PASS. Motion carried unanimously.

**EXECUTIVE ACTION ON SB 479**

**Motion:** SEN. THOMAS moved that SB 479 DO PASS.

**Discussion:**

SEN. WALTER MCNUTT commented he does not have a lot of employees nor a lot of prospects for a lot of employees. His company has been involved in a situation where they had a worker out for approximately eight months and they put that worker back on. His concern is this going to impact small, medium and large businesses. He does not feel this is an equitable situation.

SEN. COCCHIARELLA explained this bill is a dilemma for her, because she can remember a time she worked at the State Fund. An employer phoned her and explained he ran a KOA Campground. The second maintenance man hired for the season fell off the lawnmower, hit his head, and is in the hospital and won't return to work for at least six months. The law states that injured workers must have preference. This person was in the middle of summer tourist season and needed to hire someone else. After six months, the KOA season is over. If the injured worker were released in some capacity to work, and he is not physically or mentally capable to do that particular job, that man would have to be re-hired. When the injured worker's spot is filled and they are there for 18 months, they have learned the position, then that person is out the door. If there is not an opportunity in that place of business to put that 18 month employee back in somewhere, are they on unemployment? Every single person who fills a spot would have to be hired on a temporary basis, which may conflict with other bargaining provisions. She does not believe this will work.

**Substitute Motion/Vote:** SEN. THOMAS made a substitute motion that SB 479 BE TABLED. Substitute motion carried 8-1 with SEN. BARTLETT voting no.

**EXECUTIVE ACTION ON SB 508**

**Motion:** SEN. COCCHIARELLA moved that SB 508 DO PASS.

**Discussion:**

**SEN. ALVIN ELLIS** asked **SEN. COCCHIARELLA** why are the number of weeks increased to 350 weeks, but in two places in the bill it says 396 weeks.

**SEN. COCCHIARELLA** responded he needed to check the permanent partial disability column, the \$198 now is \$205.50. That is the maximum benefit allowable and that is the amount of the half of what is used to be. They can only get half of the average weekly wage, which is what that number reflects. In the next column, duration and weeks are 350.

**SEN. THOMAS** explained the charts show \$199 is the weekly maximum benefit. The actual claim payment in Montana is low compared to other states. The charts show if Montana was to make payments based on the average payment in the region, we would be at \$53,000 rather than the \$43,000 we are at now. We have lower wages in Montana which explains why the average pay-out is lower. If this is calculated on average wages, we are actually paying above the average. Why do we still have the highest rates in the region, yet low benefits? We have more claims than the others, that is why the higher wages. He believes all the Workers' Compensation benefits in Montana should be reviewed. He believes we should come back next session and address all the benefits, instead of passing this bill.

**CHAIRMAN KEATING** expressed he gets nervous when we begin adjusting Workers' Compensation benefits. He understands what is going on with Workers' Compensation from years ago. We look at our rates and Montana is still high in the region. From a competitive standpoint of attracting entrepreneurs to begin businesses in this state to create jobs, the factors they will look at are Workers' Compensation rates, taxes, etc. It may only be \$10,000 for the maximum increase of an individual who is really beat up, although they still have an opportunity of another job so they can make a living okay. When you take a look at all of it and 30% of the market share is \$2.5M, we are looking at about \$7M to \$8M increase costs to the employers who happens to have someone injured on the job. That raises our rates slightly more, which makes Montana less competitive as a state for the attraction of someone who wants to open a business. This is one increase in benefits, then there is another, then another and soon we have moved to where we are not competitive at all. The average wage now is \$9.5 to \$10 per hour in this state, and that is low in the region so that explains the low benefit. He would like to see higher paying jobs, but when people look at those Workers' Compensation rates, that is one factor of where people move.

**SEN. BILL WILSON** commented if we don't treat people more fairly, this whole thing could blow up. When he sees these bills, he thinks about his industry. He said thank God he has the right to sue that corporation. In the railroad industry, the day he gets hurt, he can get on the phone. He will make 'damn' sure he gets enough money and they are making 'damn' sure that workplace is safe and it is because of that threat of a lawsuit. He believe we need to do something and go another direction. He said it is embarrassing we cannot help these people.

**SEN. COCCHIARELLA** said **SEN. WILSON** is right and **CHAIRMAN KEATING** said something very important. The concept of her bill comes from concerns she hears from employers who pay premium and have someone seriously injured on the job site and ask if that is all they get. The employer has been paying premiums for years and asks if that is all the insurance policy is going to pay? The amount of \$205.50 per week is the maximum benefit. It is the frequency of those injuries which cause higher rates, and if we look at that we need to ask why. That is another issue and should have nothing to do with how much we pay them in benefits. Frequency is another issue. She would like to address that problem and agrees we should look at all of it. But it is how many of these cases out there that are real scary. She agrees the high cost of Workers' Compensation is keeping people out of the state. When we have people who are paid more, the rates go up, so by raising everyone's wages the premium should go up. She doesn't believe those go hand in hand. She believes this helps employers who pay their premium over time, when they have an injured worker to pay them some more benefit in this less populated place with not as many opportunities or jobs. This is not a lot to ask for.

**Vote:** Motion that **SB 508 DO PASS failed 4-5 by roll call vote.**

**Motion/Vote:** **SEN. THOMAS** moved **TO ESTABLISH AN INTERIM COMMITTEE TO LOOK AT WORKERS' COMPENSATION BENEFITS AND FREQUENCY.** Motion passed unanimously.

**Substitute Motion/Vote:** **SEN. THOMAS** made a substitute motion that **SB 508 BE TABLED.** Substitute motion carried 5-4.

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**ADJOURNMENT**

Adjournment: 5:11 P.M.

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SEN. TOM KEATING, Chairman

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GILDA CLANCY, Secretary

TK/GC

**EXHIBIT** (las40aad)